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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/600,178

06/20/2003

J. Kirk Haselden

MSFT-1741 (301923.01)

9748

41505

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05/29/2009

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EXAMINER

VU, TUAN A

ART UNIT

PAPER NUMBER

2193

MAIL DATE

DELIVERY MODE

05/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/600,178	Applicant(s) HASELDEN ET AL.	
	Examiner TUAN A. VU	Art Unit 2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the Applicant's response filed 3/26/09.

As indicated in Applicant's response, claim 21 has been amended. Claims 1-10, 15-22 are pending in the office action.

Response to Arguments

2. Applicant's arguments filed 3/26/09 have been fully considered but they are not persuasive. Following are the Examiner's observation in regard thereto.

3. Applicants have submitted that a declaration under 37 CFR § 1.131 is "attached hereto", whereby declaring that Nara (effective priority date of March 3 2003) does not qualify as prior art (Appl. Rmrks pg. 6, top). A closer look at any corroborating facts regarding the 'attached hereto' statement, it is observed that there is no proper execution of an Affidavit in a form compliant with said CFR. That is, using pleading inside an "Applicant's Remarks" cannot constitute a formal substitute for a formal declaration which should be executed with signature of declarant and fulfillment of all required terms defined under this rule. The declaration per se is deemed not present and the above pleading (effectuated inside a 'Applicant's Remarks') that Naha does not constitute prior art cannot be honored.

4. Applicants have submitted invoice (redacted form) of a law firm to show diligence according to MPEP § 715.07 II, § 2138.06 as evidence to showing that 'work' has been sustained from a period prior to 3/3/03 to June 2003 (Appl. Rmrks, pg. 6-7). However, there is no legal oath or declaration provided for the Office to ascertain whether as executed the affidavit under CFR § 1.131 would be exercising option (a) with inventor's owning subject matter prior to an

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effective prior date **or** option (b) with inventor's showing prior conception via sustained diligence (by character and weight facts) prior to an effective prior date.

5. According to option b, conception of a invention from a date (or time) declared (sworn via a proper execution of the Affidavit) as prior to an effective date would have to be supported by evidence of weight (emphasis added) that show that work had been more or less continuous from the sworn time up until 6/20/2003 date of reduction to practice. The 'redacted' copy provided shows a 'case administration' 2/4/03 and 'Received and began study of Disclosure Materials' 3/7/2003. First, there is one month gap between 2/4 and 3/03/03 which is unexplained. Further, in the hypothetical case where the Affidavit is executed under **option b**), the fact that a case is administered at date 2/4/03 does not show weight and character (emphasis added) that the inventor (or Microsoft) had started to **conceive** the subject matter (e.g. a date * sworn by a proper declaration) and then provided work up to the time when the law firm received the "disclosure materials" (3/7/03) and then beyond such time. Suppose that the date (conception date or time *) sworn by the oath (not a statement inside an Arguments section) is properly executed, the amount of work up the actual 6/20 date would have to be shown (without a significant unexplained gap of non-activity) as dated representation of work or exhibits, all of which reasonably conveying continuity of (inventor or Microsoft) activities starting from the time (e.g. time *) of initial conception of the claimed subject matter through 3/03/2003 and up to June 2003 (reduction to practice) as raised above. Such provision is not deemed achieved in the current Applicant's response.

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6. For the above reasons, Applicants' argument is deemed insufficient to overcome the effective prior date of 3/03/03 and application of Narayanaswamy (USPN: 6,069,553). Absent further rebuttal against the outstanding grounds of rejection, the 103 rejection will be maintained.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-10, 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al, USPN: 7,069,553 (hereinafter Nara_swamy) and further in view of Pace et al, USPN: 7,181,731 (hereinafter Pace).

As per claim 1, Nara_swamy discloses a method for deployment of components, comprising:

defining dependencies (e.g. *server profile ... list of available servers* – col 4 lines 31-41; *list of platforms* - col. 5 lines 15-22; *getEjbRefs ... context settings... ejb tree* – col 3 line 66 to col 4 lines 4) by components of pluggable component-based software (one or more plug-ins – col. 4 lines 24-47; plug-in interface 112, Fig. 1),

generating, by the cooperating interface, a list of defined dependencies (e.g. *server profiles* - col. 4 line 61 to col. 5 line 10; *list of platforms* - col. 5 lines 15-22; *xml file ejb tree* – col. 4 lines 1-4; List 402 Fig. 4);

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identifying, by the cooperating interface, files associated (EAR files ... plug-in ... interfaces helper interfaces – col. 4 lines 12-41; col. 4 lines 1-4; getDeploymentModules – col 3 lines 53-55) with the list of defined dependencies;

processing, by the cooperating interface, the list of defined dependencies and identified files (col. 5 line 11 to col. 8 line 8) to generate the deployable bundle (Fig. 12-13); and deploying the deployable bundle.

Nara_swamy does not disclose wherein at least one component of a deployable bundle is provided by a third party, but disclose EJB beans including in JAR/EAR bundle having associated descriptors needed for deployment (col. 5 line 56 to col. 6 line 48). Pace in a deployment framework using EJB similar to Nara_swamy discloses third party delivery of classes or Java.TM related program/assets based on conventions in their nomenclature (third party – col 42 line 37 to col. 43 line 23). It would have been obvious for one skill in the art at the time the invention was made to implement the EJB classes or objects in Nara_swamy package so that these are delivered by third party and distributable via servers in order to support the deployment of packages via utilizing assets retrieval (database information specific – col. 5 bottom to col. 6 line 18) and using plug-ins or well-known EJB reusable classes, in that accurate provision thereof from third parties (using EJB conventional or repository naming) can alleviate extraneous pre-storing of needed APIs or fixed programs at the target environment.

As per claim 2, Nara_swamy discloses deploying the deployable bundle to a cooperating environment (Fig. 7-13).

As per claim 3, Nara_swamy discloses merging the dependency list, the identified files, and default component elements (step 310 Fig 3 – Note: merging of connectivity data and XML-

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based descriptor – see col 17 to col. 18; Fig. 6-8 – reads on merging of dependent servers and addresses into a JAR/EAR package using an interface and checking a XML jar file -- Fig. 8 --for default/standard W3C syntax reads on *default* elements) to generate the deployable bundle.

As per claim 4, Nara_swamy discloses scanning the components to identify default elements (packageFiles – col 10 lines 7-15; ConvertContainers, checkForStart, checkForEnd – col. 11 lnes 9-25 -- Note: checking a XML jar file -- Fig. 8 --for default/standard W3C syntax reads on *default* elements and checking content between tags reads on *non-default* extensible elements) and non-default elements (e.g. addProfile – col. 10 lines 24-33; Replacer, willReplace - col. 11 lnes 9-25; new application server not listed – col. 6 lines 50-57).

As per claims 5-6, Nara_swamy discloses providing an installer component for inclusion of component (installing – col. 4 lines 42-47) needed for the deployable bundle; and validating the deployable bundle (e.g. isActive, checkForStart, checkforEnd – col. 11 lines 28-34; *isEjbOrwarAvailable* col 14, li. 19-20; *throws* Deployment Exception - col. 14, 45-60 – Note: classes associated with server list for supporting deploy plug-in reads on validation thereof - see *interface 112 class 104 106* - col. 5 lines 11-35) by installing the deployable bundle in a computing environment (packaged EAR file - col 5-6). Nara_swamy does not explicitly disclose including of an *installer inside* a deployable bundle and using it for validating, but in view of the above plug-ins role in executing the deployment process, it would have been obvious for one skill in the art at the time the invention was made to implement a installer plug-ins as part of the deployment package for the intent of validating using this installer being provided as plug-ins based on Nara_swamy's incorporation of plug-ins based on server selection environment from above.

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As per claim 7, Nara_swamy discloses providing configuration files for inclusion in the deployable bundle.

As per claims 8-9, Nara_swamy discloses merging the dependency list, the identified files, and default component elements (refer to claim 3) to generate the deployable bundle and performing the merge of the dependency list, the identified files, and default component elements to generate the deployable bundle (refer to claim 3); but does not explicitly disclose providing a *merge module* to generate the deployable bundle; but based on the effect of combining dependency information, identified files and default component elements as taught above wherein a target EAR is generated at its deployment location after remerging of modified deployment descriptor or repackaged elsewhere after being transferred thereto (*FTP, repackaged* - col 7 line 7 col 8 line 8). Based on the need to repackaged a deployable EAR file at its destination after retransmission via ftp, it would have been obvious for one skill in the art at the time the invention was made to implement the deployment process based on the above need so that a merge module accompanies the deployment package to its destination in order to support the repackaging as endeavored above.

As per claim 10, Nara_swamy discloses a computer readable storage medium having computer readable instructions for:

defining dependencies by components of pluggable component-based software,;
generating, by the cooperating interface, a list of defined dependencies;

identifying, by the cooperating interface, files associated with the list of defined dependencies;

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processing, by the cooperating interface, the list of defined dependencies and identified files to generate the deployable bundle; and deploying the deployable bundle;

all of which having been addressed in claim 1.

But Nara_swamy does not explicitly disclose wherein at least one component of a deployable bundle is provided by a third party. However, this limitation has been addressed in claim 1.

As per claim 15, Nara_swamy discloses a computer system having a processor configured to deploy a package having dependencies comprising:

dependency data representative of the dependencies of components of the package,

the package comprising pluggable component-based software, and

a merge module to merge the dependency data with the components of the package to generate the deployable bundle.

Nara_swamy does not explicitly disclose wherein at least one component of a deployable bundle is provided by a third party; however, this limitation has been addressed in claim 1.

As per claim 16, Nara_swamy does not explicitly disclose comprising an installer, the installer being merged by the merge module to generate the deployable bundle. But the limitation as to including a installer inside the deployable bundle has been addressed in claim 5, whereas the merge module has been addressed in claim 9.

As per claim 17, Nara_swamy discloses comprising configuration information, the configuration information being merged (e.g. server specific configuration 308 – Fig. 3; *ejb-jarxml* - Fig. 7-8) by the merge module to generate the deployable bundle.

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As per claim 18, Nara_swamy discloses (refer to claim 3) comprising default package components, the default package components being merged by the merge module to generate the deployable bundle.

As per claim 19, Nara_swamy discloses comprising a communication means for use in communicating (Fig. 2-3 – Note: wizard, cooperating servers, databases – see Orachel 9I, JBoss servers – Fig. 4 -- and FTP read on communication means) the deployable bundle to a cooperating computing environment.

As per claim 20, Nara_swamy discloses comprising a validation means to validate the proper deployment of the package (refer to claim 6).

As per claim 21, Nara_swamy discloses a computer system having a processor for use in the deployment of components having dependencies comprising:

means for determining the dependencies of components of pluggable component-based software,

the components defining the dependencies to the means for determining;

means for merging the determined dependencies with the components of the pluggable component-based software to generate the deployable bundle;

all of which having been addressed in claim 1.

Nara_swamy does not explicitly disclose wherein at least one component of a deployable bundle is provided by a third party; but this limitation has been addressed in claim 1.

As per claim 22, refer to claim 9 to incorporate the rationale addressing merge module provided at the target environment as an installation means cooperating with the merging means for installing the deployable bundle.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (571) 272-3735. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis Bullock can be reached on (571)272-3759.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3735 (for non-official correspondence - please consult Examiner before using) or 571-273-8300 (for official correspondence) or redirected to customer service at 571-272-3609.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Tuan A Vu/

Primary Examiner, Art Unit 2193

May 26, 2009